

Subject: Re: Re SkyTel action to obtain new counsel, EB Docket No. 11-71

Date: Thursday, February 9, 2012 1:34:12 PM PT

From: Warren Havens <warren.havens@sbcglobal.net>

To: Marlene.Dortch@fcc.gov <Marlene.Dortch@fcc.gov>, Richard Sippel <Richard.Sippel@fcc.gov>, Pascal Moleus <Pascal.Moleus@fcc.gov>, Mary Gosse <Mary.Gosse@fcc.gov>, 'Patricia Ducksworth' <Patricia.Ducksworth@fcc.gov>

CC: Albert J. Catalano <ajc@catalanoplache.com>, Charles A. Zdebski <czdebski@eckertseamans.com>, Eric Schwalb <eschwalb@eckertseamans.com>, Gary Schonman <Gary.Schonman@fcc.gov>, Harry Cole <cole@fhhlaw.com>, Howard Liberman <Howard.Liberman@db.com>, Jack Richards <richards@khllaw.com>, Jeffery Sheldon <jsheldon@fr.com>, Jimmy Stobaugh <jstobaugh@telesaurus.com>, Kurt DeSoto <kdesoto@wileyrein.com>, Laura Phillips <Laura.Phillips@db.com>, Matthew Plache <mjp@catalanoplache.com>, Pamela Kane <Pamela.Kane@fcc.gov>, Patricia Paoletta <tpaoletta@wiltshiregrannis.com>, Patrick McFadden <Patrick.McFadden@db.com>, Paul Feldman <feldman@fhhlaw.com>, "rjk@telcomlaw.com" <rjk@telcomlaw.com>, Robert Guruss <guruss@fhhlaw.com>, Terry Cavanaugh <Terry.Cavanaugh@fcc.gov>, Wes Wright

SkyTel Reminder of Service Address,

And Further Complaint of Impermissible Ex Parte Presentations by Maritime, Including as Basis for Equitable Extensions of Time Hereby Asserted

1. The address for service to the SkyTel Entities in the Hearing (until we obtain new legal counsel and said counsel enters and appearance) is:

SkyTel Entities
c/o Atlis Wireless LLC
2509 Stuart Street
Berkeley CA 94705
Attn: Jimmy Stobaugh
(510) 841 2230 - phone

Do not use certified or signature-required mail or courier service: that may cause delay or non-delivery, If an party wants delivery confirmation, we can provide that by email, if the party agrees to the same.

2. Maritime and others in this Hearing have the above address already, but still, I provide it again above:

- The above address is on the SkyTel entities' pleadings challenging Maritime and the Applicants in this Hearing that were filed on ULS against the Applications captioned in the HDO, FCC 11-64.
- That address information is in accord with rule sec. 1.47(d) (...last known address...). Sec. 1.47 and service thereunder applies to this Hearing.
- Thus, there was no requirement for the SkyTel Entities to, again, provide the service address above.

3. In addition, the preceding further demonstrates that the Maritime presentations in this Hearing that were not served on SkyTel after the Drinker law firm withdrawal (none of which were served on SkyTel) were impermissible ex parte presentations which SkyTel properly reported as such below to the FCC OGC.

4. *SkyTel asserts prejudice in this regard, including as a basis of extension of time to respond to, and for reconsideration of, any matter in this Hearing, based on the time period involved in these Maritime impermissible ex parte presentations. SkyTel reserves all other rights in this regard.*

Filing and service:

I believe I am copying here all the Parties. If I find otherwise, I will correct that.

A copy of this (entire email string) will be timely filed in EB 11-71.

The SkyTel office will timely mail a hard copy of this email to the ALJ's office, the Secretary, and the Parties at the addresses of record.

Respectfully,

/s/

Warren Havens

President

"SkyTel" Entities

Skybridge Spectrum Foundation

V2G LLC

Environmental LLC

Verde Systems LLC

Telesaurus Holdings GB LLC

Intelligent Transportation & Monitoring Wireless LLC

2509 Stuart Street

Berkeley CA 94705

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Sent: Wednesday, February 8, 2012 10:34 PM

Subject: Re: Re SkyTel action to obtain new counsel, EB Docket No. 11-71

Supplement of Feb 9, 2012 (Eastern time) to the below Report of February 8, 2012.

1. SkyTel hereby reiterates its objection to the withdrawal of Drinker for reasons stated in this proceeding and details provided to the ALJ in camera.
2. SkyTel also reiterates its objection I stated at the hearing of January 25, 2012 regarding the ALJ proving so little time-- only a week, excluding required travel time of myself for the MCLM bankruptcy matters, which I explained-- to obtain replacement counsel, in which I also indicated circumstances noted in this Supplement and the below Report.
3. Drinker was handling for the SkyTel entities not only this Hearing, but over a half dozen other major legal matters, some related to this Hearing, e.g., the Maritime bankruptcy, the parallel SkyTel petitions challenging MCLM and its actions in and related to Auction 61 pending before the FCC, and the US District Court action I indicate in item 2 of my January 22 email below (which claims were brought into said bankruptcy in a SkyTel proof of claim, and that also may become dispositive of all of the MCLM licenses, independent of determinations in this Hearing). A number of those cases have near-term deadlines for SkyTel to meet with replacement counsel. As in this Hearing, Drinker took no action to allow for an orderly transition to new counsel in those matters, and misrepresented the actual reasons for its abandonment with no advance notice.
4. While the ALJ commented orally at the January 22 hearing that the Drinker firm is a good firm, that general comment is not relevant (whether true or not) to this particular situation. To the extent that comment reflected a finding or view in support of the effective one-week-only period to get new counsel (such as: as if SkyTel is to blame for the "good firm's" withdrawal), SkyTel objects and has records to demonstrate the basis of its objection.
5. As reported below, SkyTel is diligently pursuing new counsel, but --
 - (i) the short deadlines to get new counsel in this Hearing and other cases noted above-- which appear substantially caused by Drinker misrepresenting the actual reasons for the withdrawals (as could have been fully expected, this set up oppositions by adversaries to requested reasonable time to get new counsel, where they suggesting some wrong action by SkyTel, and this also set up considerations by authorities involved as to shortening said requested time, assuming the attorneys of their profession are likely not to blame but the client is as the withdrawing attorney indicated),

(ii) the number of cases involved that Drinker dropped,
(iii) the required specialization needed of new counsel,
(iv) the need for SkyTel to explain confidentially the actual reasons for the Drinker firm's withdrawal to at least partly allay concerns of candidate counsel (and allow them time to consider as they may chose, including review of relevant records),
and
(iv) the conflict issues (SkyTel entities is involved in many radio services and new wireless businesses, and there are many entities in this and other fields that pose direct and otherwise serious conflicts) --
in the aggregate make this a complicated undertaking to obtain new counsel not possible to complete in a short time frame in any practical and reasonable business sense and without serious prejudice to SkyTel.

6. Rushing this process of SkyTel getting new counsel will only result in substantial risk of another crisis like that caused by the Drinker withdrawals, and may also trigger appeals on the merits.

7. Also, there is no credible suggestion and no proof of any prejudice to any other party (other than SkyTel) with regard to SkyTel not having counsel in this Hearing for a period of time, and this Hearing case hasn't been moving swiftly even before the Drinker withdrawal, or afterward. The fact is that this Hearing only came about due to the pro se pleadings and prosecution of its case against MCLM and affiliates before, during, and after Auction 61 as in part reflected in the HDO FCC 11-64. Practically, SkyTel can continue pro se participation in this Hearing until it obtains new counsel, and equitably it has a far more sound and demonstrable claim to do so in the public interest than any other party in the Hearing may assert, with or without counsel.

8. In this regard, SkyTel does not believe that may be required to be represented by counsel to participate in this hearing under applicable law. FCC rule sec. 1.224 is not applicable to SkyTel entities since they are not entities described under 1.224(a). Sec. 1.221(d) and (e) -- SkyTel entities all satisfied these conditions with regard to this Hearing, and are thus participating Parties. There is no requirement for use of counsel to appear as or participate as Parties. Moreover, Sec. 6(a) of the Administrative Procedure Act, 5 U.S.C. §555(b) (1976), grants the claimant the right to be represented by counsel at the hearing. However, this right need not be exercised fully, or for a period of time in an adjudication. "A party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding." (Here, but for the wrongful withdrawal by Drinker (which is clear in SkyTel-Drinker communication records, and in DC bar association rules as to improper abandonment of a case), this would not be an issue.) For example, in a case, an administrative law judge abused his discretion on the facts of the case in denying requests for continuance by claimant to obtain legal counsel, where claimant had not waived right to counsel, and where the Administrative Procedure Act provides for right to counsel in administrative hearings. *Johnson v. Director, OWCP*, 9 BLR 1-218, 1-220 (1986). 20 C.F.R. §725.362(b) and the holding of the Board in *Shapell v. Director, OWCP*, 7 BLR 1-304 (1984), recognize the policy concerns implicit in allowing claimants to proceed without counsel.

9. In this regard, SkyTel asserts constitutional due process rights and rights to normal service under the applicable rules. SkyTel objected in an email earlier today to Maritime counsel, in this regard, including as to impermissible ex parte presentations by Maritime.

10. In addition, SkyTel reserves all rights, and objects to any other events, actions, or omissions of which Skytel has not had notice and an opportunity to be heard after the Drinker motion to withdraw was filed and up to the time it obtains replacement counsel and said counsel has filed its appearance and served the parties.

Filing and service:

I believe I am copying here all the Parties. If I find otherwise, I will correct that.

A copy of this (entire email string) will be timely filed in EB 11-71.

The SkyTel office will timely mail a hard copy of this email to the ALJ's office, the Secretary, and the Parties at the addresses of record.

Respectfully,

/s/

Warren Havens

President

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Sent: Wednesday, February 8, 2012 8:59 PM
Subject: Re SkyTel action to obtain new counsel, EB Docket No. 11-71

This will be filed in paper copy also in this proceeding with the Office of the Secretary.

This is a report to Mr. Sippel (the ALJ) regarding SkyTel efforts to obtain new counsel after the withdrawal of the Drinker firm subject to the below email, my subsequent submission to the ALJ in camera, and of Order FCC 12M-7, second page, second to last Order.

Since this search for new counsel is ongoing and involved confidential review of candidates, and other matters that, if publicly disclosed, would impede this undertaking, I do not give details here, but can provide them to the ALJ in camera, if that is requested.

SkyTel has daily, after and before the Order (from the date of the Drinker email notice to SkyTel that it was abandoning the representation and advice for purposes of this Hearing (and many other legal cases of SkyTel in the nation) made it priority to obtain new counsel. It pursues this directly and via assistance of several attorneys with a practice of assisting companies in searching for appropriate legal counsel, and qualifying them, and setting up effective relations. This has involved contacting and communications with partners at many (over six) major law firms with communication practices, rejecting many others due to discovery of conflicts upon initial review, and a similar number of smaller firm. The process is not simple to complete, as it involves consideration of not only matters in this Hearing but other matters of SkyTel involving FCC law pending before the FCC (and some pending in US courts).

SkyTel has narrowed the field and expects in the near future to retain a replacement firm.
SkyTel will continue to focus on this effort to the best of its ability.

The Drinker firm, as I disclose to the ALJ in camera, fully withdraw from any assistance to SkyTel, and nothing changed that to this date.

It also acted contrary to my instruction as far as informing the ALJ of the actual reasons for its withdrawal, which is detrimental to obtaining new counsel.

However, I will ask the Drinker firm to also submit a filing in support of this report.

President
Skybridge Spectrum Foundation
ATLIS Wireless LLC
V2G LLC
Environmental LLC
Verde Systems LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC
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Sent: Sunday, January 22, 2012 10:20 PM
Subject: EB Docket No. 11-71. 1) Drinker motion to dismiss. 2) USDC action related to this FCC hearing.

EB Docket No. 11-71.

In the Matter of Maritime Communications/ Land Mobile LLC: Auction 61 and Assignment Applications.

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

1. Regarding the motion to withdraw filed by the Drinker Biddle law firm ("DB") and its supplement (the "Motion"):

DB is aware of the SkyTel position and requests in relation to the Motion.

SkyTel is in the process of obtaining procedural and substantive advice regarding the Motion and diligently seeking replacement counsel for good cause.

Until then, I do not believe I should substantively address this matter: I am not a lawyer, this is a formal hearing, and for other reasons. In addition, SkyTel's other legal counsel do not practice in FCC law matters.

I am of course willing to provide any information that you may require regarding Motion or other matters in this hearing.

As for the Maritime characterization of the Motion supplement, I believe it is diversionary. What is "grave" are the matters described in the HDO OSC, FCC 11-64 (the "HDO"), and Maritime evasion disclosing the required information. It has been close to 7 years for most of that, and longer for some (in the Mobex period). That is the cause of this hearing, and its current status. SkyTel was the entity that pursued the relevant facts, law and public interest since before auction 61 up to the release of the HDO: that is the basis of the HDO. In releasing the HDO, the Commission validated that pursuit (compare the HDO with SkyTel pleadings before the WTB including its still-pending Application for Review, which is not part of this hearing). The other parties have not contributed to the needed disclosures, but obviously engaged in due diligence leading to the HDO listed Applications. Also, see below.

2. Regarding Skybridge et al. vs MCLM et al. in US District Court, New Jersey:

The DB firm has not represented SkyTel in this case.

I take this opportunity to address the following as it is relevant to this FCC hearing.

See attached, in *Havens et. al. v. Mobex et. al.* (also styled as noted above), Civ. Action No. 11-993 in the US District Court, District of New Jersey. The court decided that SkyTel entities may proceed with their Sherman Act 1 case against Maritime and related entities, in denying Defendants' omnibus motion to dismiss that claim. (SkyTel is pursuing that claim in both that court and in the bankruptcy court handling the Maritime bankruptcy. This may be consolidated. The claim is against MCLM and the other Defendants acting in concert for over a decade.)

The relation to this FCC hearing includes that if SkyTel entities prevail in that case, then the court may revoke the Maritime licenses. 47 USC §313. See *US v RCA*, 358 U.S., *McKeon v McClatchy*, 1969 U.S. Dist. LEXIS 10593.

Any such revocation is based on court jurisdiction apart from FCC authority and actions (*US v RCA*), including in

this hearing and in any "Second Thursday" proceeding.

In addition, some parties in this FCC hearing may be involved in that court case, initially in the discovery phase for reasons apparent in the nature of the Sherman Act 1 claim as stated in the operative Second Amended Complaint. Copy at:

<http://www.scribd.com/doc/49192121/Skybridge-v-MCLM-PSI-USDC-NJ-2011-Amended-Complaint-Sc>

If discovery in this court case as to any entities results in information that is also relevant to this FCC hearing, then SkyTel will make it available.

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The SkyTel office will timely mail a hard copy of this email to your Honor's office, the Secretary, and the Parties at the addresses of record.

Sincerely,

/s/

Warren Havens

President

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Intelligent Transportation & Monitoring Wireless LLC

Berkeley California

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510 841 2220 x 30

510 848 7797 -direct

Certificate of Service

I, Warren Havens, certify that I have, on this 9th day of February 2012, caused to be served by placing into the USPS mail system with first-class postage affixed, unless otherwise noted, a copy of the foregoing February 9, 2012 Email (with accompanying email string), with subject line of “Re: Re SkyTel action to obtain new counsel, EB Docket No. 11-71”, to the following:¹

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Via messenger delivery

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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Joshua S. Turner
Wiley Rein LLP
1776 K Street, N.W.
Washington, DC 20006

¹ The mailed copy being placed into a USPS drop-box today may be after business hours, and therefore, not be processed by the USPS until the next business day.

Dennis C. Brown
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Manassas, VA 20109

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Alexandria, Virginia 22314

/s/ [Filed Electronically. Signature on File.]

Warren Havens